
**COMMISSION MEETING
THURSDAY, NOVEMBER 14, 2002
MINUTES**

Chair Orr called the meeting to order at 1:00 p.m., at the Doubletree Guest Suites in Seattle. He welcomed the attendees and introduced members and staff present:

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, Chair;**
 COMMISSIONER LIZ McLAUGHLIN, Vice Chair;
 COMMISSIONER CURTIS LUDWIG;
 COMMISSIONER JANICE NIEMI;
 COMMISSIONER ALAN PARKER;
 SENATOR MARGARITA PRENTICE;
 SENATOR SHIRLEY WINSLEY;

OTHERS PRESENT: **RICK DAY, Executive Director;**
 ROBERT BERG, Deputy Director, Operations;
 ED FLEISHER, Special Assistant, Policy & Government Affairs;
 DERRY FRIES, Assistant Director, Licensing Operations;
 CALLY CASS-HEALY, Assistant Director, Field Operations;
 AMY PATJENS, Administrator, Communications & Legal;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

Employee Service Recognition Awards:

Director Day and **Chair Orr** presented a 5-year employee recognition award to Bill Frey, 10-year employee recognition awards to Tina Griffin and Amy Patjens, and a 20-year employee recognition award to Patrick Parmer.

1. REVIEW OF AGENDA AND DIRECTOR'S REPORT:

Director Day briefly reviewed the agenda for Thursday and Friday agenda, and noted that Friday's meeting would commence at 8:30 a.m. He also identified inserts added to the agenda packet after distribution.

Administrative Issues reports were provided:

1. **Director Day** provided a brief overview of the October 25 Legislative Roundtable conducted in Renton. Director Day and Ed Fleisher appeared before Senator Prentice's Committee to discuss the EIC bill. A PowerPoint presentation was included that addressed four points: 1) a clear description of the game that may be legalized, 2) an issue referencing any statewide caps or limits, 3) central reporting systems, 4) discussions around net-win and and/or how to get to a net-revenue potential for the state, and what factors needed to be considered in that process.
2. Strategic Planning: **Director Day** highlighted the agency's action team progress, noting there are about 10 action teams involving approximately 74 employees. The teams deal with everything from strategic planning through policy development. This is an effort to make sure we involve a large number of employees to develop and bring forward better policy decisions, or the best possible decisions we can, to improve consistency in the agency and to get more work done faster by calling on a broader range of people. Regarding the strategic planning, the goal is to present a proposed 5-year plan to the Commission at the August 2003 meeting. We are in the process of drafting

goals for developing and retaining valued employees, to foster a positive work environment, pursue innovations and improvements in the agency, conduct business simply, and to build stronger relationships in a variety of interest groups and individuals associated with the Commission. An agency conference is scheduled for May of 2003.

Director Day addressed the following Correspondence Issues:

1. Correspondence was received from Craig Stevenson regarding restrictions on interstate raffle activities, he asked about having the ability to pay for a ticket in a drawing, which occurred in another state. Staff continues to work with him in case Mr. Stevenson is interested in bringing a proposal to the Commission. Current statute and rules are designed so that if there is a raffle that Washington residents invest in, it occurs in Washington, and there is an ability to follow through and ensure the prizes are awarded for the individual who paid for the ticket in Washington.
2. Personal Services Contract with the Council on Problem Gambling-November 1, 2002 through June 30, 2003. **Director Day** noted the contract has been executed and has been approved by OFM and the Assistant Attorney General. The agency has entered into a restructured relationship for direct services relative to payment of the hotline operation.
3. **Director Day** drew attention to the November/December edition of "*The Washington CPA*" wherein an article was featured by staff member David Trujillo regarding "Protecting the Greater Good: Following the Professional Code of Conduct." Mr. Trujillo, a CIU supervisor, is on the board.

Director Day reviewed the administrative case update. Afifi Shriners was removed from the agenda because it is now an expired license. Game Tech has been settled and is now waiting to go through the final approval processes. Further updates will be provided at the next meeting. Regarding Federal Congressional legislation, the only new item is Senate Bill 3006, making Internet gambling illegal.

Director Day noted various news articles of interest that were included in the agenda packet.

2. **New Licenses, Changes, and Tribal Certifications:**

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve the new licenses, changes, and tribal certifications listed on pages 1 through 20 of the agenda packet under License Approvals. *Vote taken; the motion carried with four aye votes.*

3. **House-Banked Card Room Review:**

Rocco Gaming, Inc., d/b/a/ Hide-Away Card room, Federal Way:

Derry Fries, Assistant Director, reported this organization has applied for a license to operate five tables of house-banked card games. The applicant was incorporated as a privately held Washington profit corporation in February of 2002. The corporation headquarters is located in Renton. Mr. Fries provided the stock and shareholder information.

Mr. Fries noted that Rocco Gaming does not hold any other licenses at this time. However, Tim and Michael Iszley have a substantial interest in the following house-banked card rooms: Silver Dollar/Tukwila, Silver Dollar/Tacoma, Silver Dollar/Sea Tac, Silver Dollar/Mountlake Terrace, Golden Nugget/Shoreline, Golden Nugget/Tukwila, Habana Café & Casino/Tacoma, not in operation at this time, and they have a pending application for the Golden Nugget/Lakewood.

Special agents from the Financial Investigations Unit of the Commission conducted criminal and personal background checks on all substantial interest holders and initiated and completed a financial investigation on both the corporation and personal member finances to determine possible hidden ownership, unreported substantial interest holders, undisclosed ownership involvement in other activities, and sources of all funding to start up the business and purchase/lease of the equipment and/or building. No information was noted that would preclude any substantial interest holder or the corporation from involvement in the operation of a house-banked card room.

Special agents also completed an on-site pre-operational review and evaluation (PORE), in accordance with the rules of the Commission, which consisted of an examination and evaluation of the applicant's internal controls, physical layout, gambling equipment and supplies, surveillance and security, types of games and number of gaming stations; and card room staffing. On-site records and information were compared to the materials submitted with the basic license

application. Based on the results of the licensing investigation and the PORE, staff recommended ROCCO Gaming, Inc., d/b/a/ Hideaway Card Room be licensed as a house-banked public card room to operate up to five tables with a maximum betting limit of \$25. **Tim Iszley** thanked Commission staff for working so hard and doing such a good job on this project.

Commissioner McLaughlin asked why someone would form so many corporations. **Mr. Fries** said it is done for business reasons, tax purposes, liability, and personal reasons.

John McFarland, City of Tukwila reported that Mr. Iszley has been doing business in the city for four years. During that time, the city has had a very positive experience. Mr. Iszley has been a very active in participating in community events and charitable events. Since he has taken over ownership of the Silver Dollar, Mr. McFarland reported there have been no local law enforcement or local ordinance concerns with Mr. Iszley's operation. He noted that the establishments that are currently operational in the city are very well run and represent an appreciative revenue stream.

Rick Newgard, Seattle Jr. Hockey, thanked Tim Iszley and the Silver Dollar Casino for their participation in youth athletics in the greater Seattle area. He reported they are very involved in the community, and have been a great financial contributor in the community.

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve licensure of Rocco Gaming, Inc., d/b/a Hideaway Card Room as a house-banked card room authorized to operate up to five tables with a maximum betting limit of \$25. *Vote taken; the motion passed with four aye votes.*

Bayou Bistro, Inc., d/b/a/ BC McDonald's, Bothell:

Derry Fries, Assistant Director, noted Bayou Bistro applied for a license to operate five tables of house-banked card games. The applicant was incorporated as a privately held corporation in March of 1999. Corporate headquarters are located in Bothel. Mr. Fries provided shareholder information and noted that they have no other licenses at this time.

Special agents conducted criminal and personal history background checks on all substantial interest holders. Special agents initiated and completed a financial investigation on the corporate and personal member finances to determine possible hidden ownership, unreported substantial interest holders, undisclosed ownership involvement in other activities; and sources of all funding to start up the business and purchase/lease of the equipment and/or building. No information was noted that would preclude any substantial interest holder or the corporation from involvement in the operation of a house-banked card room. Special agents also completed an on-site pre-operational review and evaluation (PORE), which consisted of an examination and evaluation of the applicant's internal controls, physical layout, gambling equipment and supplies, surveillance and security, types of games and number of gaming stations, and card room staffing. Onsite records and information were compared to the materials submitted with the basic license application. The applicant was found to be in compliance. Based on the results of the licensing investigation and the PORE, staff recommended Bayou Bistro, Inc., d/b/a/ BC McDonald's be licensed as a house-banked public card room authorized to operate up to five tables with a maximum wagering limit of \$25. **Charles Delacardia** was available for questions.

Commissioner Ludwig asked if there was anything significant about the name. **Mr. Delacardia** replied that they purchased the land from BC McDonald and kept the name. **Commissioner McLaughlin** asked if he owned a business before and was told that he did not.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** to approve licensure of Bayou Bistro, Inc., d/b/a/ BC McDonald's as a house-banked card room authorized to operate up to five tables with a maximum betting limit of \$25. *Vote taken; the motion passed with four aye votes.*

House-Banked Card Room Statistical Monthly Report:

Derry Fries, Assistant Director, reported there are now 74 licensed house-banked card rooms currently operating; two are licensed, but not operating. There are 15 pending applications on report.

4. Phase II Review:

Golden Nugget, Shoreline:

Greg Thomas, Program Manager for the Northwest Region, reported that the Golden Nugget Casino is a commercial card room and lounge located in Shoreline, owned by Shoreline Gaming Corp., of which Tim Iszley owns 66.5 percent and Michael Iszley owns 22.5 percent of the stock. Other individuals own the remaining 11 percent. There are no other management companies involved in Golden Nugget Casino. The casino began gaming on May 9, 2002. They are currently operating five house-banked tables consisting of one Lucky Lady Blackjack, one Three Card Poker, one Spanish 21, one Blackjack, and one Fortune Pai Gow Poker. The licensee is currently licensed to operate at a maximum of \$25 betting limits.

The Phase II review team compared actual operating procedures to the WAC governing card room activity. The licensee's written internal controls were also reviewed for compliance and consistency with actual operating procedures and record keeping verification. No material violations were noted. The city of Shoreline was contacted and confirmed the licensee was current with all local card room taxes. Shoreline Police Department was contacted to affirm there were no adverse impacts. Based on the review, staff recommended that Golden Nugget Casino be approved to operate at Phase II wagering limits.

Todd McClane, General Manager of the Golden Nugget, thanked commission staff for doing such a fine job.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve the Golden Nugget Casino in Shoreline to operate at Phase II wagering limits of \$100. *Vote taken; the motion passed with four aye votes.*

5. Group V Qualification Review:

Sno-King Amateur Hockey Association, Kirkland:

Deputy Director Bob Berg provided an evaluation for year ending June 31, 2001. He reported this organization was formed in 1965, to promote, develop, and supervise youth who participate in hockey programs and to instill in them the value of hard work, discipline, fair play, sportsmanship, and respect for authority. Volunteers for the organization donated approximately 10,000 hours of volunteer time. The licensee holds Bingo and Pull-tab licenses.

The staff analysis of the financial statements, narrative, and supplemental information indicated the organization made significant progress towards accomplishing their stated purposes. Sno-King Amateur Hockey Association is qualified as a bona fide charitable nonprofit organization for purposes of conducting authorized gambling activities in the state of Washington. Staff recommends Sno-King Amateur Hockey Association be certified to conduct gambling activities in the state of Washington as a nonprofit organization.

Mr. Mathew Blondin, Executive Director, provided a presentation highlighting the services provided by the Sno-King Amateur Hockey Association and to provide an explanation as to how their income is derived. After his presentation, Mr. Blondin thanked commission staff person, Linda Waters for her support. He said she modified her schedule at his request to meet with him on a face-to-face basis and that she deserved recognition. There was no other public input.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to certify Sno-King Amateur Hockey Association to conduct gambling activities in the state of Washington as a nonprofit organization. *Vote taken; the motion passed with four aye votes.*

Chair Orr called for a recess at 2:15 p.m., and recalled the meeting at 2:35 p.m.

6. Requests for Variance:

Yakima YWCA, Yakima:

Melinda Froud, Staff Attorney, gave an overview of the history and importance of the Adjusted Cash Flow Rule the Commission has been discussing. She said concern about returns has been an issue for 20-years. The Commission has had two task forces and staff study committees working on this issue. In 1983, Commission staff prepared a report to the Governor and Legislature, which expressed concern for the increased size of nonprofit Bingo game gross receipts in relation to the decline of funds returned back to the organization's stated purposes. The report stated in part: "Either too much money is being given away as prizes to attract players, or expenses have become too great, or a combination of

both. In either event, good management and the principal of accountability dictates that Bingo games operated for the purpose of raising funds for charitable and non-profit purposes must be required to do just that; raise funds and be accountable.”

Since that time the Commission has explored different ways to help nonprofit organizations meet this purpose, including new class sizes, prize payout limitations, and net return requirements. RCW 9.46.070 gives the Commission the authority to regulate and establish maximum limitations on income derived from Bingo, including the extent to which income derived from Bingo is used for charitable purposes. However, the Commission has historically only regulated the bottom line for licensees. As the regulation of Bingo activities shifted in the early 1990’s, Commission staff found that many nonprofit organizations were having difficulty meeting their net return requirements. In response, the Commission reduced the net return requirement by one percent and allowed variances for the director’s approval. In 1995, after recommendations by another net return task force, the Commission made further reductions from one half to one percent of the net return requirements and profit through amusement games, and raffles were added to the calculation. In 1998, another task force comprised of staff and licensees affected by the net return requirements, was created as the result of the continuing decline in Bingo activity. The task force brought forth many new rule change proposals. During that time a net return moratorium was established which slashed the net return requirements across the board by five percent.

Prior to adopting the proposed Adjusted Cash Flow Rules, the Commission acknowledged their potential effects. Former Commissioner Forrest noted there might be some casualties among the Bingo operators once the rules took effect. He also indicated that the Commission would not have another fix or continuation regarding the process. He commented that if Bingo “is a continually shrinking market, eventually some people will have to leave.” Moreover, Commissioner Forrest recognized that if licensees were unable to meet the minimum contribution, they would need to close. The timing of the new rules gave the licensees an opportunity to make the necessary changes for compliance. Recognizing that Bingo is a very cyclical business, staff explained the rules before they were passed, and explained that they didn’t want to have any formal sanctions until an organization did not meet the requirements for a full year. This would give all licensees the same opportunity to make the necessary changes for compliance. During rule discussions, staff stated that the two main goals of the rules were to simplify the process of keeping it fair meeting basic accounting standards, and to focus the measurement on the dollars available from the Bingo operation for the stated purposes of the charity or nonprofit. WAC 230.20.059 became effective on April 1, 2001, and provided in part that if a licensee failed to meet its adjusted cash flow requirements when averaged over any consecutive four-quarter period, the director shall issue administrative charges for revocation. The rule sets forth two kinds of variances that may be available to licensees that fail to meet the required adjusted cash flow so long as certain criteria are met. The first type of variance may be granted if the licensee is within ten percent of the amount required over four consecutive calendar quarters based on the licensees’ plan to gain compliance.

Neither of the licensees before the Commission today qualifies for this type of variance. The second type of variance may be granted if a licensee had a long-term, legally binding financial obligation for its Bingo facility prior to April 1, 2001. The licensee may have a variance of up to two years based on the licensees’ plans to gain compliance during that time. This variance was intended to provide temporary relief for licensees that have entered into excessive rental or lease agreements prior to the effective date of the rule. The variance may be granted to give the licensees time to renegotiate the building obligation or to make more economical arrangements. Both licensees today have requested the full two-year variance allowed, and the director and staff have determined that the variances must start at the beginning of that first four-quarter measurement period in which each licensee was out of compliance. Under the rule, the two petitioning licensees were out of compliance starting with the first four quarters the rule took effect. Therefore, any variance granted today would start with the second quarter of 2001 and continue through the first quarter of 2003, ending at that point.

In analyzing the second type of variance petition, the Director and staff came up with three steps, or factors, for considering these petitions. The first was whether a long-term obligation existed for the Bingo facility. The second was whether, under staff’s guidelines, the variance allows the licensee to come into compliance to date, and third, whether the licensees’ compliance plan projects that it will be in compliance after the variance period is over.

The first step involves verification of some type of lease agreement or mortgage documentation. Staff reviews the obligation expense claim to determine how it is excessive in comparison with similarly situated Bingo operators. For the

second step, determination of whether the variance will allow the licensee to meet the adjusted cash flow requirement, staff came up with certain guidelines for calculating the variance. The maximum amount available could not exceed the amount needed each quarter to be banked over multiple quarters, or allow the licensee to operate with a negative cash flow. Moreover, the amount may not include depreciation since credit has already been given to all licensees for that in the adjusted cash flow calculations. The last step requires that the licensee be in compliance after duration of the variance. WAC 230.20.059 requires that a licensee requesting a variance must submit a plan for future compliance after it fails to meet the adjusted cash flow. The rule provides in part that the licensee must take steps to reduce its expenses and prizes paid.

In addition to this first compliance plan regarding immediate changes, staff also requested that each licensee submit a forecast of its anticipated compliance with the adjusted cash flow requirements through 2003, as well as a dollar amount for the variance requested for each quarter. Staff also reviewed the percentage of gambling receipts paid out by licensees as Bingo prizes compared to the percentage paid out by other operators, since staff noticed that licensees that fail to meet the requirements might have excessive payout percentages. Based on this information from the licensees, staff determined whether each one was likely to be in compliance after the variance period expired. Under the current rule, staff believes that the Commission must find that the licensees meet the criteria for each of these three steps in order to receive a variance under the rule. The amount of proceeds required to be returned back to the licensee's charitable purposes has been repeatedly lowered and is now a relatively small percentage of a nonprofit's overall gambling receipts. Staff believes that noncompliant operators take gambling proceeds away from other organizations, and that only licensees in compliance should be allowed to operate. The focus must be on the dollars going towards the charitable programs as opposed to other factors, such as the licensees' gross receipts, the size of their Bingo hall, or the number of people employed by the Bingo operation. Procedurally, if the Commission grants a variance in either case, staff recommends that the order include some provisions for enforcement, such as insuring that the licensee complies with future adjusted cash flow requirements, does not operate with a negative cash flow, and that it has immediate penalties for violations. If the Commission denies either of the variance petitions, the licensee has the option of appealing to Superior Court. If the licensee chooses not to appeal the decision, it may proceed to a regular revocation hearing before an administrative law judge. Therefore, the Commission need only decide whether the variances should be granted.

Ms. Froud said that with regard to the YWCA of Yakima, on June 4, 2002, Director Day issued administrative charges for revocation against the YWCA of Yakima for failure to meet its adjusted cash flow requirements under WAC 230.20.059. The licensee subsequently requested a variance for its adjusted cash flow and submitted documentation supporting the request. For the first four quarters following April 1, 2001, the effective date of the rule, the licensee was short of its required amount by \$19,562. This information is based on quarterly activity reports submitted by the licensee, and verified by Commission agents. Prior to the revocation charges, the director issued a summary suspension to the licensee on February 22, 2002, for having two consecutive quarters of negative cash flow in the third and fourth quarters of 2001. The licensee submitted an amended quarterly activity report showing a positive cash flow for the fourth quarter and the administrative law judge granted a stay at that hearing.

Addressing the three-part test previously outlined, staff first looked at the existence of a long-term obligation for the licensees' Bingo facility. The licensee does have a mortgage; however, mortgage payments are captured through depreciation on the building and through interest expense. Depreciation is already deducted from the adjusted cash flow calculation. In its materials, the YWCA of Yakima indicated their mortgage was approximately \$195,000 and that it would like to try again to sell the building and get out of gambling after a couple of years. The licensee did not report any occupancy expense on its quarterly activity reports. In contrast, other Class J licensees report an average expense of \$7,071 per quarter, and other Bingo licensees in the Yakima area report an average of \$7,502 per quarter. Looking at whether the variance would result in the licensee being compliant to date, staff reviewed the adjusted cash flow after the variance was applied. Because the licensee does have a mortgage, the maximum variance amount was based on interest expenses for the building's mortgage. After applying the maximum amount of the variance for the first four quarters under the rule, staff found that the licensee did not meet the required adjusted cash flow for the 3rd or 4th quarters of 2001, and that the licensee was still short by \$8,700 for the adjusted cash flow amount for the four quarter measurement period.

In determining whether or not the licensee would be in future compliance, staff looked at their initial compliance plan from last November and found that it was 50 percent effective in meeting its plan to gain compliance in the fourth quarter of 2001 and the first quarter of 2002, and that it was 63 percent effective in the second quarter of 2002. The

licensee projected that it would be able to meet its adjusted cash flow for calendar year 2002 after applying variances for the third and fourth quarters. For 2003, the licensee first predicted that it would not meet its adjusted cash flow for the third and fourth quarters and that it would be short by over \$6,000 for the year. However, Commission staff wrote to the licensee and requested specific variance numbers. They were also asked why they used an 80 percent payout forecast. The licensee subsequently revised the forecast explaining that it would gradually decrease the prize payout by 2 percent for each quarter of 2003. The revised forecast indicated that the licensee would be in compliance for 2003.

In looking at the licensees' prize payout, staff noted that it had the highest payout for its region between the second quarter of 2001 and the second quarter of 2002, with an average of 83.4 percent. For every one percent that the licensee could have reduced its payout for the year 2001, it would have generated \$23,920 for its programs. Although the licensee has reduced its payout from 86 percent, it plans to payout at least 80 percent through calendar year 2002. For the most recent quarter ending in September of 2002, the licensee paid out at 83.5 percent, although it forecasted a payment of 80 percent. Unfortunately, staff has not had a chance to analyze the numbers for the third quarter, but was able to take a look at the licensee's payout amount for the quarter.

Staff does not feel this licensee has an excessive obligation for its building payments. The type of variance requested by the YWCA is intended to help licensees with excessive payouts to give them time to renegotiate the obligation or to make other more economical arrangements. Even if staff believed that the licensee had the type of building expense that qualified for the variance, the variance itself would not make them compliant for the first four quarters after April 2001. The licensee would still be out of compliance by \$8,700 for the first measurement period, even with the maximum variance amount allowed. Moreover, the licensee has not shown that it will meet the final step of its analysis. The rule provides that the variance must be based on their plan for gaining compliance. The YWCA's own projections for prize payout in the current year are based on lowering its prize payout percentage to 80 percent. However, their prize payout actually increased from 82.43 percent in the second quarter of this year to 83.5 percent in the third quarter. This is problematic for staff. The licensee has not followed their own compliance plan or forecast for 2002, and the licensee has continued to operate with Bingo prize payouts in excess of 80 percent after November of 2001, when staff sent a letter to the licensee informing them that they had failed to meet the adjusted cash flow for the last two quarters. Under the rule, they were required to submit a compliance plan and immediately reduce expenses and prizes paid out.

The high prize payouts are troubling to staff since the variance was not intended to subsidize licensees that have high prize payouts. The YWCA has averaged nearly 3.5 percent higher than local Bingo operators and is 9.62 percent higher than the industry average. Staff is concerned that since every one percentage point would generate \$20,000 dollars per year for the licensee's charitable programs, that thousands of adjusted cash flow dollars are being lost by the high prize payouts. This is also hurting other compliant Bingo operators, since this takes away potential revenues from their charitable programs. Staff has not found any evidence that high prize payouts help licensees generate more funds for their programs. In fact, the Sister Rebecca Bergoff Foundation in Yakima, has the lowest average prize payout and the highest adjusted cash flow in that local region. Based on these factors, staff does not believe the YWCA has met the three criteria under the variance rule and recommends the Commission deny the licensees' petition.

Commissioner Ludwig asked if anything would allow a Bingo operator to only operate two quarters a year--could they operate the first and second quarters like January through June and not the second half of the year. **Ms. Froud** said she was not aware of anything that would or would not allow them. She suggested that it could raise an issue in reference to the measurement period being based four quarters. She didn't know whether or not that measurement period could be split out, or whether the task force discussed that issue. Commissioner Ludwig commented that there are a lot of business considerations that may be relevant.

Senator Winsley asked whether they are fulfilling their charity obligations. **Ms. Froud** responded that staff does not believe so if they are not returning the set number of dollars back to the charitable programs.

Kevan Montoya, Attorney representing YWCA, and Executive Director **Melinda Barrett** were present. Mr. Montoya responded to Senator Winsley's question, and said they are able to continue, and to fund the domestic violence operations even though they don't meet the number that the Commission established as the cutoff for saying that they are presumptively involved in an operation that is conducted solely for gambling purposes. Even though they are short a few thousand dollars, the few thousand dollars that they bring in does fund the domestic violence programs for families and women in the Yakima Valley. The Yakima YWCA would like a variance for two years from the date that they filed

their plan of compliance with the Gambling Commission staff. They want the variance for two years because they are going to get out of the Bingo business. They are developing an exit strategy, and they need a variance to get out so that they are not strapped every month with a mortgage payment, interest on the mortgage, and taxes on the mortgage if their doors are closed. **Mr. Montoya** said the real rub between the Gambling Commission and the YWCA is how one calculates occupancy expense, and what is a long-term binding financial obligation. The rule says that a licensee with a long term legally binding financial obligation for a Bingo facility, as of the effective date of the rule, which was April of 2001, may petition the Commission for a variance for a period of no more than two years based on their plans to gain compliance within two years. The operational term is "long-term, legally binding financial obligation" -- this is where they disagree with the Gambling Commission. The Gambling Commission says long-term, financially binding obligation only means a lease payment or a rent payment. It doesn't include a mortgage payment.

The YWCA was the subject of an administrative action. In order to try to comply with the Gambling Commission's concerns, Ms. Barrett sent a letter to the Gambling Commission outlining the YWCA's exit strategy and their plans for getting out of the business. They have not been able to come to an agreement with the Gambling Commission. The Commission feels that the YWCA does not have an excessive building obligation payment. **Mr. Montoya** said the term "excessive" is a different term that creates an impediment to their getting a petition for a variance granted. The organization doesn't think that excessive is something that should be applied to the rule because it is not in the rule. They don't think that a long-term legally binding financial obligation is defined as only a lease or rent payment, because it is not defined that way in the rule. They think it also means a mortgage payment, interest on the mortgage, and taxes on a mortgage. All of those things are long term in the YWCA's case -- they are binding because they have to make the payment, and if their doors are closed, they will have to make that payment every month in order to fulfill their legal obligations under the terms of the note. They would not have any gambling money to meet those financial obligations.

Another reason the YWCA can't come to an agreement relates to the benefit of a mortgage depreciation recapture. The organization is granted the benefit of mortgage depreciation, however, the depreciation is not the same as the dollar-for-dollar amount they have to pay on their mortgage. Depreciation is a number created by accountants to try to spread out the cost of a building over a life span. The depreciation the Commission is giving the organization is a lot less, approximately \$30,000 every year, than what the YWCA is paying on their mortgage.

The Commission also says the organization doesn't report occupancy expenses on their quarterly activity report. That is correct, however, the way the form is written, one cannot enter the mortgage payment as a quarterly occupancy expense. The Commission says that the organization doesn't qualify for the variance because of the lack of any overwhelming building obligation. That is a term not defined and not used in the actual regulation. Prize payout percentages are also problematic for Commission staff.

When YWCA staff met with Commission staff on October 31, 2002, they said the rule as it was originally promulgated was intended to only allow people with bad leases or rental agreements the benefit of the legally binding financial obligation rule. They also said excessive was a requirement they were going to impose even though excessive was not in the applicable regulation.

The YWCA believes the Gambling Commission's interpretation of their rule is contrary to Washington law. Multicare Medical Center v. Department of Social & Health Services says that when a regulation is clear and unambiguous, a court should apply its plain language and may not look beyond the language to consider the agency's interpretation. It also says that when faced with an unambiguous regulation, the court may not speculate as to the intent of the regulation or add words to the regulation. **Mr. Montoya** stated that staff is adding words to the regulation drafted. The organization thinks the three-part test, while helpful as a management tool, does not have the strength of law, and is not binding. When one looks at the rule, it should be interpreted with the stated intent in the rule--to prevent people from engaging in gambling solely for the purpose of gambling. **Mr. Montoya** said the Gambling Commission says that the average quarterly occupancy expense for Class J licensees is \$7,071. They also say there is a lack of an excessive building obligation by the YWCA, but when they define the building obligation, they don't give the benefit of the actual dollars out of pocket, and limits the organization to what the form says they can take. The YWCA doesn't think that meets the requirement of the rule.

Mr. Montoya reported the Y's actual expenses are higher than other licensees in the Yakima Valley. On a yearly basis they pay \$44,968 for the principal. Insurance is \$12,314 and taxes are \$11,888 per year for a total of \$69,170. On a

monthly basis that is \$5,764. On a quarterly basis that's \$17,292. The Commission indicates that the depreciation recapture will cover the difference, however the Y's depreciation for 2001 was \$14,968. The actual mortgage expense, just the principal, was \$44,968 -- which is a \$30,000 difference. The Gambling Commission has said that even if the YWCA were granted a variance, it wouldn't be enough to help. The YWCA believes that if they can get a variance based upon the difference between what is paid out of pocket, and what the average is in Yakima County, there would be a \$10,241 difference. The numbers are only numbers the Y wants to meet for a long enough period of time to get out of the business. The Y believes they have a good exit plan, and when they met with the Gambling Commission, the response was, why not just turn in the license -- close the doors and reapply. That is not possible; there is still the mortgage obligation, taxes, and insurance. If they are required to pay that without the aid of any gambling income, it will have to come dollar for dollar out of services or staff, and it will create an unspeakable financial burden for the YWCA. The Y believe this case will present a precedent, and believes the precedent should be based upon the law, and based on the actual interpretation of the rule, and its literal words. The YWCA believes the variance should be based on actual occupancy expense, the mortgage payment, the taxes, and the insurance. The Y believes that the Gambling Commission, by using interest, taxes, and only the depreciation, is not fair, and is contrary to the rule.

The organization sent a letter to the Gambling Commission citing their plans for gaining compliance, and expressing a hope to have at least two more years to operate Bingo, which would allow them to use cash flow and the revenue generated, while they create and implement the other recommended strategies. In an effort to gain compliance, The Y is leasing out their administrative offices to other nonprofits. They are renting meeting facilities in their Naches Avenue Properties to generate income. They are operating a small boutique of used clothing in their Naches Avenue Property. They've decreased administrative staff to fewer staff than ever before, and they are aggressively pursuing grants and other ways to increase income/revenue. The organization is in business to feed, house and clothe women and children, and to provide legal advocates. There are emergency cell phone programs for victims of domestic violence. They support counseling for victims of domestic violence, and they do this all free of charge. The impact will be very real if the Y doesn't have the opportunity to keep business open until they can close the doors gracefully and sell the Bingo operation. **Mr. Montoya** affirmed if the Y sold their building prior to the two years, they would get out of the Bingo operation before that time. They are making plans to list the property in 2003, and they are asking the Commission to allow two years of operation, from September 18, 2002, to 2004 in order to gain compliance.

Commissioner Ludwig asked why it would take two years to sell. **Mr. Montoya** responded there is a very depressed real estate market in the Yakima area. Commissioner Ludwig asked if they knew about the other three Bingo operations, and whether they own or rent their buildings. **Ms. Barrett** responded that it was her understanding that the other three rent their properties. They tried to negotiate with two of the other licensees in hopes that they could share facilities. They, however, felt it was in their best interest to operate seven days rather than share facilities. Commissioner Ludwig asked if it would be beneficial to them to take over their mortgage. **Ms. Barrett** said they had the property for sale between 2000 and 2001, and they had two offers, both of which were grossly under the lowest square footage for commercial property. They made a counter offer, and didn't hear back again. She further explained, their first two quarters are like most Bingo halls, the most profitable quarters. The reality is, that last year they netted just over \$50,000 in their four quarters. They did make money. Unfortunately, they were a little below compliance level. **Ms. Barrett** emphasized that the other thing that has to be continually addressed -- is that the Commission isn't just looking at what they net in a year's time, \$50,000. The reality is, it is also cash flow that allows them to make their payroll and make their accounts payable expenses while they wait for grants to come in. Their grants don't come in every month. They usually come in quarterly, and they have agreements with the city when they get six months behind on paying them, so the cash flow from the Bingo operations helps them to continue operating while they wait for grants to come in. It is that cash flow that is more difficult to replace than it is the net that is derived from operating Bingo. **Ms. Barrett** affirmed the Y advised the agency that they have formed an ad hoc committee of four business professionals in the community of Yakima who are helping them restructure. They have three pieces of property, and they are looking to financially restructure by selling the Bingo property and only operate two properties. It will take time, but they hope to see the property sell between six months to a year.

Commissioner McLaughlin asked if the national YWCA helped in any way. **Ms. Barrett** said they do not. They pay 12 percent of gross receipts to be a member, but they don't help. The YWCA has recently restructured, and they are closing the national office and passing the work to the regions, and regional responsibilities have increased.

Commissioner Ludwig asked if 12 percent of gross income included the gambling income. **Ms. Barrett** said it did not.

Commissioner McLaughlin asked about the prize payout issue. **Ms. Barrett** said they have decreased their prize payout in the last four quarters by about 4.5 percent, and are continually decreasing. This happens over time, Gambling Commission staff realizes it could take a year. It's a constant tweaking of the game to the tune of reducing the payouts, but not so drastically that you decrease attendance.

Commissioner Niemi expressed concern about the way everyone is handling this. She felt that everyone had to recognize that there is no amount of things that could be done. The Commission keeps lowering the cash flow requirements, and they can't keep doing that. She noted that everyone is having a hard time raising money, and sooner or later they will have to get out of Bingo. She said she couldn't be more sympathetic with what the YWCA is doing, but everyone was being a little unrealistic. Regarding the variance requests, she noted the legal arguments made were understandable, and the Commission's arguments are important. They can go through the whole legal process and they may or may not want to do it depending on the decision made on the variance. However, everyone must realize that we are talking about gambling, not a land use project. Commissioner Niemi expressed concern about opening up the variance gate. She didn't know if it would be possible to convince a Court that there are ways to handle statutes and regulations in different kinds of ways. She emphasized that as we talk about variances in gambling, there is a greater and stricter compliance than if we were addressing variances in building, or a fence, or even a different land use. She believed a variance would be very hard to agree to. Commissioner Niemi emphasized the Commission can't keep giving variances, because invariably the organizations would be back in another year or two requesting another variance. The state is having a hard time, and is doing the same things the YWCA is doing, which is to cut some very needed and necessary programs. She affirmed the YWCA programs are all really necessary, and if they give up the Bingo operation, they may have to cut programs, or they may have to change their fundraising events. Everybody is cutting, and Commissioner Niemi suggested that maybe when people realize how many things are being cut across the board, things would change. The point is; they are going to have to be a little faster, and maybe a little tougher, and get out of Bingo.

Chair Orr asked if this is an appropriate executive session matter. **Mr. Ackerman** affirmed the Commission has the right to deliberate and then to render their opinion and decide whether or not they are going to grant the petition.

Commissioner McLaughlin asked staff why the mortgage should be treated differently than a lease or rent. Ms. Froud responded it was not their decision. They do disagree with some of the statements that were offered by the YWCA. She explained that her understanding is that the licensee would be asking for a delayed variance start date. This would actually give them another six-month delay, in effect, giving them ten quarters, when the variance actually provides for eight. She explained that the definition of excessive is based on the industry average. Mortgages not expressly included or excluded from the rule. Certainly, the intent behind the rule was to help those licensees that had lease and or rent obligations. She affirmed it makes sense that a mortgage may be a 30-year obligation, and won't go away unless one sells the property. Ms. Froud explained that the option was given to the licensee to surrender their license, and it was done in good faith by staff. If the licensee wants to have a clean slate, that would allow them to do so, and allow them to restructure and come back, and probably go through some type of a pro forma review, and be able to move forward. Although there were five charitable programs in the presentation, Ms. Froud reminded the Commission that the focus is not on what they do, but getting those funds back to the organization under agency defined rules. She agreed with Commissioner Niemi that operators are just starting to realize their expectations are unrealistic, especially on prize payouts. The licensee did reduce their prize payout but they started at 86 percent, one of the highest in the state, and now they are currently at 83.5 percent. It really hasn't gone down that much.

Commissioner Ludwig said that with all due respect to staff, did they mean rent and lease obligations as opposed to long-term legal financial obligations. Commissioner Ludwig tended to agree that a mortgage is a long-term financial obligation. Ms. Froud agreed. She said she wasn't on the task force and couldn't comment on the intent. She called on staff member Kathy Mills for an explanation on the accounting principals. **Chair Orr** asked the Ms. Barrett if she was made aware of the task force meetings, and she affirmed.

Kathy Mills, Financial Reporting Services, explained that Generally Accepted Accounting principals require that fixed assets such as a building be depreciated. A mortgage has two components, depreciation and interest. There is a matching concept that's based on the principal. It matches expenses to the period the revenue was generated. The principal, as it affects mortgages, is to match the expense to the life of the asset, the period of time in which the economic benefit is derived. Depreciation is the method that allows this matching principal to the proper period. A licensee must give an explanation of material differences between the amount reported on gambling activity reports, and the financial

statements, which are prepared with Generally Accepted Accounting Principals. The activity reports are based on figures generated through GAAP. Going further, the Gambling Commission looked at how this would have affected the YWCA if this had been a rent amount. An amortization schedule was reviewed, and staff determined the adjusted cash flow was negative \$9,991. However, if the YWCA would have had a rent expense, it would have been negative \$20,000. The reason is that they give a benefit of adding back that depreciation, so it actually makes it so they are not required to have as much cash flow. Effectively, they had a benefit because they do own.

Mr. Montoya said they were confusing concepts. The definition they are relying on to say that recapturing by depreciation is adequate is in Exhibit A. For purposes of the quarterly report, the rule says that there will be calculated an adjusted cash flow from Bingo operation. He said it is not as complicated as the state makes it sound, and the reason they tried to take away their license is because they were misinterpreting what that is. It's dollars in and dollars out for a particular quarter. The adjusted cash flow is different than what his organization is asking for in the variance. They are two separate issues and there is a separate administrative proceeding currently pending. Mr. Montoya emphasized that the depreciation does not account dollar-for-dollar for each expense they have on the mortgage. If the agency is going to calculate cash flow out for purposes of the quarterly annual reports, they should use cash flow out for purposes of what the petition for variance would be. They aren't asking the Commission to open the floodgates. They are asking for a one-time variance so they can get out of the business. The rule itself says that a petition for a variance may be granted for a period of two years. They simply want the benefit of the regulation the Gambling Commission promulgated, that allows a two-year variance based upon a legally binding financial obligation.

Ms. Barrett reported that she has been at the game of Bingo less than two years, and she noted there are people in this room who have been addressing the compliance issues for 22 years, and they are still having problems with compliance. The YMCA doesn't want to be in Bingo any more, and they need to restructure because raising funds is more difficult now than ever before. They just want to be able to pay their bills until their property sells.

Assistant Attorney General Ackerman commented that if he is reading the information that is being supplied correctly, it appears that the organization met cash flow for the first quarter and the second quarter of 2002. He asked if they met it for 3rd quarter. **Ms. Barrett** said they were under by about \$2,000. Mr. Ackerman asked if they were going to be able to meet the requirements -- if the Commission granted them a variance for two years, would the plan they have outlined in their presentation allow them to meet their requirements for the eight quarters left. Ms. Barrett said they wouldn't have problems in the first and second quarters. They would need the variance applied to the third and fourth quarters of 2003 to be in compliance. The wording in the WAC states a two-year variance from the date of the plan, and their plan was submitted on September 18, 2002. Mr. Ackerman asked what they would project as far as the fourth quarter averaging requirement -- would they meet their cash flow requirement when averaged over four quarters. Ms. Barrett said they would. The one quarter that is always a problem for a four-quarter rolling average is the dreaded 2001 third quarter. Since they are on a four-quarter rolling average, they still have that third quarter calculated in. Once that drops off, the four-quarter average would look much better. Mr. Ackerman verified that they are anticipating that for 2003, using the four-quarter average, that they would need a variance to meet the cash flow requirements. Ms. Barrett affirmed that by the third quarter they would most likely need a variance. Mr. Ackerman asked about the four quarters following that. Ms. Barrett said she did not quite understand, but, anticipated that in the first and second quarters they would not require a variance to be compliant—it's when they get into the third and fourth quarters of the year that their numbers tended to drop, and they would most likely need a variance. Mr. Ackerman asked if they would still be in business in third and fourth quarters of 2004, would they still need variance at that point. Ms. Barrett said she was hoping that they would not be in business at that time, but the likelihood is that they may still need the variance at that time.

Chair Orr noted the problem has existed since September of 2001, and he was concerned about how that date was chosen. Ms. Barrett said it is confusing and pointed to the diagram on Page 4. Out of the last four quarters, they were noncompliant for two. Commission staff is saying that they would go back to the beginning of when the new ruling applied. The ruling says that the variance would be from the date of when the plan is in effect. When the YWCA staff met with the Commission, it became confusing on where anyone's variance would start, especially if you are looking backwards. The YWCA looked at the date when they submitted their plan for a future two-year variance, not a past variance. Chair Orr stressed that when a licensee realizes there is a problem, that's when the plan should start—they should not wait while the Commission talks about it for three or six months, or three quarters and then come up with a plan. He felt like the Commission was just duped for three quarters, and the organization has been out of compliance for three quarters. He inquired, if they know there is a problem, why wait a year to come up with a plan. **Ms. Barrett**

repeated that in the first and second quarters they were compliant. The plan they adopted last year has been successful thus far. They have fewer staff at their Bingo hall, they don't have security, they aren't cleaning their carpets every week, and they have cut expenses greatly. They continually adjust their games, however, the reality is that attendance continues to decrease. They have maintained compliancy this year so far.

Ms. Froud responded that staff doesn't believe the date is arbitrary. It is an objective date as to when the variance begins, and it is driven by the four-quarter measurement period. The Commission must have some standard with which to measure when the licensee is out of compliance. She affirmed that the YMCA was fine for the first and second quarters, they had problems for the third quarter or perhaps even the second. The measurement period will always go back four quarters. It is not an arbitrary date. The rule in Section 4 (A)(1) talks about developing a plan to gain compliance. That's after the first two quarters of being out of compliance. Staff sent a letter in November of last year advising the YWCA that they were out of compliance at that time. It is not an arbitrary rolling date. The plan is referenced in Subsection 5, however, Ms. Froud believed an argument could be made it's the same plan. She clarified that an organization couldn't keep on having plans.

There were no further comments, **Chair Orr** called for an executive session and recalled the open public meeting at 4:30 p.m.

Commissioner Niemi made a motion seconded by **Commissioner Ludwig** to deny the variance. *Vote taken; the motion passed unanimously.*

Mr. Ackerman announced that the Commissioners asked him to make some comments to explain their interpretation of the WAC, since this is the first petition that has been considered under the WAC, and to perhaps provide guidance to staff and to future petitioners, and to explain to Yakima YWCA how they arrived at their decision. In large measure, the Commissioners have indicated that they agree with Mr. Montoya's legal analysis, to the extent that staff in its guidelines, have created additional requirements to what are currently contained in the regulation. They are not legally binding and are not appropriate things to require petitioners to meet. The bottom-line for purposes of this case; the Commission does agree that a mortgage is a long-term legally binding financial obligation, and that the petitioner has met that requirement of the WAC. The Commission also considered when the variance period should begin for the purposes of applying WAC 230-20.059, and they considered the interplay of Subsection 4(B) and 5. The Commission concluded the variance period, if one would have been granted, would have run from the time at which administrative action was required to be taken under Subsection 4(B), of that being when the average over a period of any four consecutive calendar quarters was insufficient to meet the adjusted cash flow requirements of the section. The commissioners further indicated, however, that they do not believe that the Yakima YWCA has presented an adequate plan to bring the Y into compliance with their adjusted cash flow requirements going forward over that two-year period. Accordingly, because the Commission does not believe an adequate plan has been presented to bring the Y into compliance within the time period indicated, they have taken the vote to unanimously deny the petition.

Chair Orr called attention to the fact that there is an open forum for debate on the WACs. He fervently requested, particularly the Bingo organizations, to get on the Commission's contact list, because it is imperative to keep in contact with the Commission. He suggested that had there been better communication, perhaps some of the problems could have been avoided early on. Chair Orr emphasized the Commission doesn't like to come across as the bad guys, and the Commission absolutely understands the good things the Bingo industry people do. Unfortunately, there are those who vote to downsize government and downsize social services, and it is tough to be involved in charitable organizations. Chair Orr thanked Mr. Montoya for his help and **Mr. Montoya**, in turn, thanked the Gambling Commission for its time. **Chair Orr** called for a five-minute recess. The meeting was recalled at 4:45 p.m.

Seattle Skating Club, Seattle:

Melinda Froud, Staff Attorney, reported this licensee was previously served with charges for the revocation of its license to conduct Bingo activities for failure to meet adjusted cash flow requirement under WAC 230.20.059. She said they were working off a November 7th memo. The licensee requested a variance and submitted additional documents in support of their petition. For the first four quarters after April 1, 2002, the licensee was short of its required amount by \$8,131. Looking at the three-part test, staff reviewed their building obligation. The Seattle Skating Club does have a lease that goes through 2002. For the second quarter of 2001 through the second quarter of 2002, the lease expense was \$19,070. This is slightly lower than the average occupancy expense of \$19,660 for Class L and the locale. Staff

determined they would need a variance for the first three quarters. For the third and fourth quarter of 2001, the variances would not make the licensee compliant for those quarters individually. They had a very strong cash flow in the first quarter of 2002, and the numbers for that quarter averaged with the first three quarters would make the licensee compliant if a variance were included.

To determine subsequent compliance, staff looked at the licensees' compliance plan and noted that it was 66 percent effective in meeting the plan to gain compliance. That was their original plan. Their adjusted cash flow for 2002 was out of compliance even with the maximum variance amount allowed applied. The licensee predicted that it would exceed the cash flow for the third quarter of this year by \$5,775 without any variance. However, staff analyzed the licensees' 3rd quarter numbers on November 7, and found them in the negative of \$15,148. The maximum variance allowed would not make them compliant for this quarter. The negative quarter also affects the licensees' overall adjusted cash flow. Staff found that for the measurement period from the fourth quarter of 2001, through the third quarter of 2002, Seattle Skating would be \$3,765 below the adjusted cash flow requirement even with the variance applied. For 2003, the licensee forecasted that it would exceed its adjusted cash flow by more than \$100,000. Reviewing the licensee's prize payout, the Seattle Skating Club has had an average payout of 76.12 percent, which is higher than most other operators in Snohomish County. Additionally, that rate is higher than the industry average of 73.78 percent. Although the licensee's payout percentages seem only a few points higher, in comparison, every one percent of that adjusted cash flow could have gone back to the programs, or if it were adjusted cash flow, that could have gone back to the programs. It would have generated an extra \$37,305 for the year 2002. In the third quarter of that year, the licensee raised its prize payout to 80.9 percent, although it had forecasted a prize payout of 71.91 percent for that quarter.

Ms. Froud addressed staff's recommendation – she affirmed the licensee does have a long-term legally binding obligation for its building; however, it was noted this facility has an escape clause in its lease allowing for termination of the obligation with six months notice. This type of alternative arrangement is exactly what a variance was intended to do, so it doesn't seem that a variance would even be necessary in this case with that provision. The licensee's subsequent plans for compliance are problematic. While the variance would bring the licensee into compliance for the first four quarters, it is already out of compliance for 2002, even with the maximum variance amounts applied. Any variance granted would be based on the licensee's plans to show compliance under the rule. Their adjusted cash flow for the third quarter was \$69,623 below the amount they predicted in their plan, which puts them out of compliance for the last four-quarter measurement period. The licensee's third quarter results also caused staff concern about future predictions to be in compliance for the fourth quarter of the year, as well as for calendar year 2003. Staff is troubled by the fact that the licensee is continuing to operate at a prize payout percentage higher than the regional industry averages, especially since the licensee was advised a year ago to reduce its prize payout amounts. Considering these factors, staff does not believe that the licensee has shown they are qualified to receive a variance. Staff therefore recommends that the Commission deny the petition.

Commissioner McLaughlin questioned the six-months lease option. **Ms. Froud** explained that it was a six-month escape notice. Commissioner McLaughlin asked if they had given that notice. Ms. Froud said that if the organization had, the Commission was not aware of it. She believed the organization simply wanted staff to know they had that option available.

Kimberly Clarke, Business/Finance Manager, said she just recently took her position in August. She appealed to the Commission regarding its determination in granting or not granting a variance, and she reported that a number of changes have occurred within the last three months. The Bingo Manager left, and another individual who worked closely with Mr. Bock, Charlene Haggis, is also no longer with the organization. It was at that time that she was asked to step in to work with others to develop the plan requested by the Commission, which was submitted September 3rd. She said the organization believes that if they were given a little more time, there would be a positive change. Another major change is the new rule to allow Bingo halls to merge and/or run seven days a week. They chose not to merge and instead added a day. They now run four days. They made a number of changes in October, and have seen a positive turnaround due to a reduced payout from 87 percent in September to 73 percent in October. They are working towards their goal of 67 percent, which they are currently achieving on the Wednesday afternoon sessions. They increased their headcount from September by 11 percent. Their net Bingo receipts for October versus September were 100 percent higher than they were the previous month. Net receipts for Pull-tabs were 13 percent higher from September to October. Ms. Clarke said another area they needed to look at was the snack bar, which was losing about \$2,000 to \$4,000 a month. They

hired new management and developed a strategy. As of September, they made money and the preliminary numbers in October show they made money in the snack bar as well. **Ms. Clarke** affirmed this is still a work in progress, but their business plan shows the changes they have implemented at this time are making a positive difference. The months of July and August were positive cash flow months. Their September month put them at a negative cash flow, which was the time the competitive issue impacted them.

Ms. Clarke reported that the Seattle Skating Club Board of Directors are knowledgeable professionals—an attorney, an accountant, businessmen and women, who are not willing to allow this to go on indefinitely, if it is not producing a positive cash flow. They realize that Bingo is going away; they are conservative and want to take whatever steps necessary to ensure the longevity of the ice club with or without the Bingo operation. They are committed to making sure their Bingo operation is financially sound within the regulations of the Gambling Commissions. With all the changes in the last quarter, their Board feels they need more time to sort things out and stabilize. To act quickly would not give them a chance to stabilize.

Ms. Clarke gave a brief history of the club. They have over 300 members in the ice skating club, of which, 97 percent are under the age of 18. The Bingo hall has been a huge part of the club for over 20 years. Without the Bingo hall they would not have been able to build the training facility they have in Mountlake Terrace. They are proud to offer a safe environment amidst today's violence and drug use. The Bingo hall has also given them the ability to offset the cost of ice-skating to the members and their families. Ice-skating is very expensive. The cost for one skater training five days a week with a number of coaches, ice time, fees, travel costs, costume fees, skates blades, music, and travel costs can reach upwards of \$1,500 a month. The club subsidizes the ice fees for their members by over \$15,000 a month to help with these costs. They also help with funding for competitors that compete at a regional, sectional, and national level. They sent 20 skaters to compete at the regionals, and four to sectionals. They also offer academic and ice-skating scholarships.

Ms. Clarke asked the Commission to consider granting a variance to give the club a chance to prove their plan can work. They have a great group of employees who have worked at the hall for over 15 years, who will do everything in their power to comply with the Commission's requirements. The recent changes adopted by the Legislature are evidence of intent to foster nonprofit gambling operations in the state. By granting this variance for the club, it would be consistent with the intent of the legislation. The club is willing to live with stricter guidelines. The variance being granted at this time would allow the club to pursue their only means of income.

Commissioner Ludwig asked if she had any comments with reference to the six-month escape clause, noting that it is not a long-term financial obligation. **Ms. Clarke** said the six-month out is something that they have been very fortunate to have. They fought very hard to get that language, in the event they had to close. Commissioner Ludwig asked if six months is, in her opinion, a long-term, legally binding financial obligation. **Ms. Clarke** responded that it is not.

Commissioner Niemi asked about the amount of money they take in from Bingo. **Ms. Mills** responded that last year, they took in \$110,000 from Bingo for the whole year over and above their expenses. Their gross was \$5.6 million and the required amount was \$108,000. **Commissioner McLaughlin** noted that 86 percent goes out in prizes. Commissioner Niemi asked about the other properties. **Ms. Clarke** said they have the skating rink in Mountlake Terrace and another rink they just ventured into with Seattle Junior Hockey at the Lynnwood Ice Center. Commissioner Niemi, asked about the cost per person to skate, and who pays. **Ms. Clarke** said the skaters pay the majority, and the club helps offset the cost of the ice fees.

Commissioner McLaughlin asked about the scholarships. **Ms. Clarke** affirmed they offer academic scholarships as well as ice skating scholarships once a year. **Commissioner Niemi** asked what kind of academic scholarships they give. **Ms. Clarke** said the last two academic scholarships they gave were for two children going off to college that were still skating—and they also gave two scholarships to high school students. **Ms. Clarke** addressed their involvement within the community and noted they are a 501 (4)(c). They are in the process of changing their status to a 501(3)(c).

Mr. Ackerman addressed his comments to **Ms. Froud**. He said that in reading the memo that staff submitted to the Commission, it indicates that the administrative charges for revocation were issued on June 5, 2002, and they were issued for failure to meet the four consecutive quarters requirements. He asked what four quarters are they alleging that the Seattle Skating Club did not meet its adjusted cash flow requirement. **Ms. Froud's** response was the second quarter

of 2001 through the first quarter of 2002. Mr. Ackerman reiterated his understanding that beginning with the second quarter of 2002, it was staff's opinion that Seattle Skating Club would, or would not, be able to get into compliance with their adjusted cash flow requirement within the next two years. Mr. Ackerman said that he is asking this question because when he looked at some other comments beginning on page 3 of the memoranda going on to page 4, and maybe other places, staff seems to indicate that the Seattle Skating Club is going to have a positive adjusted cash flow for different quarters during that time period. He advised that he was trying to understand first of all what their plan was to get into compliance during that time period, and what fault staff finds with it. Ms. Froud said she believed the concern they had, starting with second quarter 2002, was that there were some quarters in which they were out of compliance, even with the variance. The problem is the third quarter of 2002, looking forward from that and trying to average in that negative quarter. What hurt the licensee most in terms of their compliance plan was that they had projected to be much higher than where they were.

Mr. Ackerman asked if there was a workup that would give them the numbers for that time period. **Ms. Mills** responded that every four quarters is another measurement period and based on 2002-3 going back to 2001-4, this organization was out of compliance for the four quarters by \$19,671. Mr. Ackerman asked to look forward--where would the Seattle Skating Club's adjusted cash flow be from April 2003 to April 2004--would they still fail to meet their adjusted cash flow requirements. **Ms. Froud** responded that based on what was forecasted, they were estimating to be at least \$100,000 in excess of their minimum adjusted cash flow for 2003. However, with the negative quarter that's now come in for the third quarter, it's difficult to know whether or not that will actually occur.

Mr. Ackerman asked Ms. Clarke to summarize the actions that Seattle Skating Club has taken to deal with the shortfall, and what are they doing, going forward, to prevent this from happening in the future. **Ms. Clarke** said they changed their formats, they lowered their payout percentages, and they picked up the Monday when they increased from three days to four day; however, as of yesterday, they dropped the Monday. She gave it two months and didn't pan out, so the Mondays were dropped and they operate on Tuesday, Wednesday, and Friday. By dropping Monday, they are minimizing the loss in the payouts and overhead in staffing for that day. They are evaluating their morning sessions because they are not as strong anymore. Ms. Clarke emphasized they are doing everything they can to work within the regulations and within the financial responsibility they have to make necessary changes. There were no other comments.

At 5:10 **Chair Orr** called for an executive session and recalled the public meeting at 5:25.

Commissioner Niemi made a motion seconded by **Commissioner McLaughlin** to accept a variance for the Seattle Skating Club, ending January 1, 2004. *Vote taken; the motion passed unanimously.*

Mr. Ackerman said the Commissioners asked him to offer some comments explaining their rationale for granting the variance in this case. One of the discussions under WAC 230-20-059(b) related to whether or not the licensee had a long-term legally binding financial obligation for its facility. That question revolved around the fact they now have a six-month buyout to get out of their lease. However, the WAC is specific. It says, "a long term legally binding financial obligation for its Bingo facility as of the effective date of this rule." The effective date of the rule was April 1, 2001. Based on the material that has been provided to the Commission, Seattle Skating Club did not obtain its six-month buyout until an amendment was attached to the lease on February 22, 2002. Applying the literal terms of the rule, the Seattle Skating Club did have a long-term legally binding financial obligation without a six-month option-out on April 1, 2001. In contrast to the last petition, the Commission is satisfied that based upon the materials that have been presented, the testimony, and the argument that has been presented by the advocates for both parties, the Seattle Skating Club does have a plan and is implementing a plan to achieve compliance within the period of the variance that's been granted, which is January 1, 2004. Since Subsection 5(B) of WAC 230-20-059 provides that the Commission can grant a variance for a period of no more than two years, the Commission has exercised its discretion based on the information that has been provided to establish the January 1, 2004 date as the extent of the variance.

Commissioner Ludwig affirmed this organization got the benefit of the rule, even though he doesn't believe they have a long-term financial obligation now. The rule says a licensee had to have a long-term financial obligation as of April 1. He wished her good luck. **Commissioner McLaughlin** said she voted for this because of their plan.

7. **Other Business/General Discussion/Comments from the Public:**
Chair Orr called for comments from the public and there were none.

Executive Session To Discuss Pending Investigations, Tribal Negotiations & Litigation:

At 5:30 p.m., Chair Orr called for an Executive Session, and he recalled the meeting at 5:45 p.m. Chair Orr recessed the meeting until 8:30 a.m., November 15, 2002.

**COMMISSION MEETING
FRIDAY, NOVEMBER 15, 2002
MINUTES**

Chair Orr called the meeting to order at 8:35 a.m., at the Doubletree Guest Suites in Seattle, and welcomed the attendees.

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER LIZ McLAUGHLIN, VICE CHAIR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER JANICE NIEMI;
SENATOR MARGARITA PRENTICE;**

OTHERS PRESENT: **RICK DAY, Executive Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Special Assistant;
DERRY FRIES, Assistant Director, Licensing Operations;
CALLY CASS-HEALY, Assistant Director, Field Operations;
AMY PATJENS, Administrator, Communications & Legal;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

Chair Orr informed the audience that at an awards banquet last evening, the Washington State Council on Problem Gambling awarded the Gambling Commission a Distinguished Service Award. He displayed the plaque.

Commissioner Niemi addressed actions taken in yesterday's meeting and commented that apparently it was the first time the Commission applied the WACs relating to the cash amount needed. She believed there were some serious questions about whether or not the organizations were doing what the Commission wanted them to do, and whether or not the rules were clear enough. She asked Director Day to have staff evaluate whether a change may be appropriate in the wording of those WACs, so it is clear to everybody—particularly about when the time this starts and when it ends—and perhaps define something that would include mortgages. **Director Day** affirmed that it was pretty clear they had some work to do. He asked the Commission to ponder what minimum amount the Commission wanted to see charities and nonprofits return to their organization. He noted the foundations of the rules are based on that concept. He asked, what is an appropriate minimum. We've heard that it's been reduced dramatically over the years. Any enforcement of that rule would be problematic if the Commission is not confident in what the designated minimum amount should be. He asked if the Commission would be willing to consider repealing the section on long-term, legally binding financial commitments, in its entirety. That section appears to have been put there for a two-year notice, or as an opportunity for affected people to see ahead and make the necessary adjustments and get out of any commitment they had.

If a licensee is below the minimum cash flow the first two quarters, they are required to submit a plan. However, the Commission doesn't audit their plan, and the licensee is supposed to submit a plan that's designed to bring them into compliance with the minimum cash flow. After that, it's not until four quarters go by, which allows for the seasonal adjustment. Then, they are scheduled for a revocation hearing, and they can petition the Commission for a variance. **Director Day** explained there are two ways to obtain a variance. One, if the entity is ten percent below the requirement, which provides the Commission the ability not to have to deal with minor amounts of monies. The second is the long-term debt. In theory, what could happen once that variance decision is made, is that it can actually go to the Superior Court. Once the decision is there and back, there could still be a revocation hearing before an Administrative Law Judge (ALJ), which

could then come back to the Commission, and which could then go back to Superior Court. If the desire is actually to gain compliance, if the foundation is a minimum amount of dollars that's supposed to go from Bingo to charity, and if the organization has a good foundation, we may have created a situation where everyone is required to go through a very long and costly process, which may not accomplish enforcement of the rule. **Commissioner Niemi** thought Director Day was talking about two things that she believed are different. She suggested simply making the rules more clear. She affirmed the issue of how much of the cash should go back to the organization is a far bigger issue that needed far more attention. She advised that everyone needed to recognize what is going on with nonprofits, and with Bingo, which goes way beyond WAC rules, and way beyond the suggestions that she hoped would come from the staff. She asked staff to have some ideas on how they could communicate suggestions for short term and long-term solutions. **Commissioner McLaughlin** affirmed it was clear to her that licensees didn't know what the Commission meant by coming into compliance. **Chair Orr** thought that was quite possible, however, the Commission doesn't audit their plan. The important thing is to have a process that is easy to understand, and that addresses the issue. The Commission needed to discuss what the Commission is going to do, because the noncompliance thing could drag out for a couple of years if an organization goes through all the appeal processes. He thanked his fellow Commissioners for their comments.

8. Minutes – October 10 and 11, 2002:

Commissioner McLaughlin made a motion seconded by **Commissioner Niemi** to approve the Regular Meeting Minutes of October 10 and 11, 2002, as presented. *Vote taken; the motion passed with four votes.*

9. Petitions for Review:

Beverly Milligan, Card Room Revocation, Jimmy Jack's Casino, Everett:

Attorney Ronald Meltzer appeared for Ms. Milligan, and **Assistant Attorney General Paul Goulding** represented staff. Each side was allowed ten-minutes for their presentation and subsequent Commissioner questions. A transcript of the hearing is available.

At the conclusion of the hearing, **Chair Orr** advised that an executive session would be conducted and the Commission would be prepared to render a decision in the matter. An executive session was called at 9:15 a.m., and at 9:40 a.m., Chair Orr recalled the open public meeting.

Commissioner Niemi made a motion seconded by **Commissioner McLaughlin** to affirm the findings of the Administrative Law Judge—the Findings of Fact, the Conclusions of Law, and the Order. *Vote taken; the motion passed unanimously.*

Commissioner Ludwig advised that he still had some reluctance about not knowing what Jimmy Jack's penalty was; however, he accepted the fact that it was really not relative in the decision in this case.

Roeub Hin, Card Room Revocation, Silver Dollar, Seattle:

Sothy Kem, Card Room Revocation, Roman Casino, Seattle:

Chair Orr inquired if either Mr. Hin or Mr. Kem or their legal representatives were present. There was no response.

Paul Goulding, Assistant Attorney General's Office, explained both cases were consolidated in the same hearing, and an interpreter was provided by the state. He affirmed that Mr. Hin and Mr. Kem were not present, and asked for a Default Order.

Jerry Ackerman asked if any member of the staff had heard from either of these parties, or their counsel, as to their appearance here today. **Mr. Goulding** advised that they did not have an attorney, and that staff had received no notice regarding their appearance. **Commissioner Niemi** inquired if they had been served with a notice of this hearing. Mr. Goulding affirmed service was by mail on October 18. Mr. Ackerman suggested the Commission wait perhaps half an hour and then entertain a motion for a default at that point.

Commissioner Ludwig asked if an order of default were rendered, would the parties have any remedy to move for reconsideration. **Mr. Goulding** responded that they could move for the Commission to reopen the case, but they would have to have a legitimate reason for not appearing today. **Mr. Ackerman** believed the parties would have ten days to

move to reconsider any order the Commission would enter, default or otherwise. The Commissioners opted to defer further action on this agenda item until the completion of agenda item 10.

RULES UP FOR FINAL ACTION

10. **Regulatory Fee Increase and Expanding Bingo and PB/PT Classes:**

WAC 230-04-202, WAC 230-04-203, WAC 230-04-204, and WAC 230-08-017:

Ms. Patjens explained the rule for an increase in license fees, is up for final action. The Commission is limited by the amount it can increase fees by Initiative 601. They have to be consistent with the fiscal growth factor, which is 3.29 percent. Item 10A deals with the fees for charitable operators. They haven't had a fee increase for three years. In June, the Commission filed rules to expand the license classes and set fees accordingly (for Bingo operators) due to the new law that allows them to operate up seven days a week. It is expected that with being able to operate up to seven days a week for Bingo, there will also be a corresponding increase in work for Pull-tabs. Typically, they run the Pull-tabs when they're running their Bingo games. The Bingo rules actually went into effect in September, so charitable operators have been able to expand their operations since then. A new fee rule is not in place right now; and they've been able to operate at the higher level without one.

In the last few months the Commission has heard from some of the very large Bingo operators who have been expressing some concern that they are already at the top level, the Class M level. What has been proposed under the new rules is to add additional classes, and the license fees for those very large operators would go up by a fair amount.

Staff has looked at this again. Referring to their packets, **Ms. Patjens** addressed Alternative 1. Under the current rules, an entity with gross receipts of up to \$15,000 pays a license fee of \$54. Under the new proposal in Alternative 1, they would be looking at expanding that license class to allow gross receipts up to \$25,000. The net effect of that will benefit all Bingo operators because they will be able to have higher gross receipts with a lesser fee than they would under the current rules. Because of that, it also helps the very large operators.

Item 10B -- the fees for commercial operators. They have also expanded the classes for Pull-tab operators.

Item 10C -- the fees for individuals.

Item 10D -- the fees for the identification stamps, the stamps put on games and different gambling equipment to help staff track them.

Ms. Patjens noted that in addition to the testimony heard the last couple of months; staff received an e-mail from Pat Ingram, who suggested that the Commission not have a fee increase. She feels we are pricing the people still trying to survive out of business, and she encouraged the Commission to look at electronic gambling.

Director Day provided a PowerPoint presentation to refresh the Commission on where the agency is with fees and revenue sources. He thought it was important to reflect on the statute, which in net effect says that the Commission is responsible to raise fees to cover the costs of licensing and enforcement in related sections of 9.46. This is a general reference, however, the Commission is responsible for collecting the dollars they need to do the job. In relation to I-601, the Commission can only increase up to the fiscal growth factor -- it limits state fee increases to the fiscal growth factor unless legislative approval is received. That determination of the growth factor is not the Commission's responsibility, but the Office of Financial Management. That ends up impacting the Commission's ability to raise the appropriate fees if there is a larger increase in one year. For instance, this year is 3.29 percent, and if we pass on an increase one year, the agency can't get that back if there is a more dramatic increase in expenses later on. As a result, it limits the Commission's ability to manage the budget to a certain extent because we can only get that small percentage. If one area is more costly to regulate, we can't increase the fees in that area at a higher percentage in order to offset the expense.

Director Day displayed a historical rendition of the fiscal growth factors that were determined by OFM and noted the years in which the Commission had not increased fees. Director Day noted that revenues are generated through license fees and various miscellaneous sources. The primary source remains Punchboards and Pull-tabs, followed by house-banked card rooms and card room employees. The Commission also receives certification and regulatory fees as a result

of Tribal Compacts with the state. Right now, the total amount of fees estimated to be collected is \$28,545,000.

Director Day reviewed the Commission's revenue and expenditure projections based on the Commission's approved budget, and reviewed the agency's fund balance. Over the years, the Commission has been trying to manage the budget between a three and six months' reserve.

Director Day explained that staff wanted to find out what might happen if the fee increases were delayed, and noted that each of the proposals has the expanded classes included. The rule on the classes is before the Commission because the legislative change adding additional days may very well result in additional revenue. Their previous schedule stopped at four million. The new class schedule accommodates any growth above that four million as a result of the new legislation. He provided a scenario of what would happen if the fee increase were delayed until June 30, and, a scenario of what the fund balance line would look like without the fee increase at all, but still having the expanded classes. **Director Day** noted that a fee increase in one total year is worth about \$346,000. Subsequently, a delay of the effective date to June 30, would only generate revenues of \$176,000. **Commissioner McLaughlin** asked if the agency could absorb \$175,000. **Director Day** responded that we've been able to reduce expenses, and staff believes they could delay the effective date, and the Commission would still be within the desired fund balance. He noted that a delayed effective date actually makes it easier for staff because it gives the licensing shop six months to get notices out, implement the new fees, and deliver them, rather than trying to get that all taken care of and ready to go by January. He also noted that even with a delay in increases, it would preserve the base in this biennium, and the Commission wouldn't lose the \$342,000 across the board.

Director Day noted the proposal Mr. Fries submitted would give the Commission the opportunity to react to the new legislation by providing additional classes if there is growth, and not bring any of the operators into that additional cost immediately. It would have the effect of actually lowering licensing costs for the Bingo licensees in the short term. Staff anticipates this would essentially be revenue neutral for the agency because of increases in Pull-tabs on one side, decreases in Bingo, and possible increases due to the class growth. However, if that didn't materialize, and there was the straight reduction in Bingo fees, the Commission could experience up to a \$70,000 decrease in revenue. Combining the two, the Commission could be giving up about \$220,000 in revenues. **Director Day** noted that overall, the fee increase is going to gain the Commission about \$342,000 over the biennium in 2004. If that is applied to the current cash balance, he believed the Commission would be maintaining a solid cash balance, and would not be collecting any more than needed. **Chair Orr** asked for questions, and there were none.

Mr. Ackerman interjected and reminded the Chair that since they were holding Mr. Goulding and an interpreter in the meeting, they were now 35 minutes past the time scheduled for the last hearing. He suggested that it would be appropriate to again call the Hin and Kem petitions for review and if no one appeared entertain a motion for default on those matters.

Chair Orr called for Mr. Hin or Mr. Kem or their legal counsel to come forward. He called on Mr. Goulding to resume the hearing. **Mr. Goulding** advised that he had not seen either party, and moved for a Default Order.

Commissioner Niemi made a motion seconded by **Commissioner Ludwig** for an order for default for both of the two card room employees, Mr. Hin and Mr. Kem. *Vote taken, the motion passed unanimously.*

Chair Orr referred back to Item 10, and called for public comment.

Ric Newgard, Executive Director, Seattle Junior Hockey Association, said he appreciated what Mr. Fries and staff have done for the Bingo license fees --it was very well done and helps the industry. He thanked staff for that. However, the new legislation fee for the Pull-tab licenses did not change the way Pull-tabs have been operated in the state since 1973. He advised that he has been running Pull-tabs for the last two years, seven days a week. Nothing has changed in his operation. His license fee on this rule change would go from \$10,000 to \$17,000. He asked someone to explain, under the 3.29 percent or I-601 limitations, how he could go from \$10,000 to \$17,000 and still fall within the "reasonable" fee increase.

Commissioner Ludwig said he didn't have an answer, but he had a question. He inquired how Mr. Newgard previously supported a seven-day a week pull-tab business. **Mr. Newgard** said they sublet part of their Bingo hall to a casino, and

then he opens his pull-tabs in the Bingo hall, and the people in the casino simply come over and play the pull-tabs if they wish. Commissioner Ludwig asked if the card room operation has Pull-tabs. Mr. Newgard said no.

Commissioner Niemi inquired which class he was in. **Mr. Newgard** responded that he was currently in Class M and affirmed that he grosses somewhere below \$6 million, and that approximately 78 cents on every dollar goes back to the player. **Commissioner Niemi** noted that if he makes up to \$5 million gross, then his fee would be \$15,000 – 17,000. Mr. Newgard agreed.

Commissioner McLaughlin asked if they have been operating at a lower level, at seven days, for how many years. **Mr. Newgard** responded that he has been following the law, and paying the current fees, and that he was still looking for an explanation on how he could go from a little over \$10,000 to \$17,000 in fees, and not have it be called a fee increase or reclassification. **Director Day** responded that when the Bingo operations were allowed to go from three days to seven days, the biggest motivating factor was, yes, there may be some additional pull-tabs sold. Once those operations go to a full seven days, if they choose to, sales should increase in pull-tabs not independent from, but directly connected to the change in the statute on Bingo. Pull-tabs had the same problem as Bingo. Their schedule was capped, which was really not in the interest of fairness.

The second issue related to consistency. There is a class schedule on both sides of the house. There is a Bingo class schedule and a pull-tab class schedule. If they added classes just on the Bingo side, they would have systems that were capped with M on one side and not capped at M on the other side. **Director Day** believed it depended on what the Commission does. If the alternative for Bingo fees were adopted, and the alternative schedule, at least there would be some offset, which is part of why staff looked at this as somewhat revenue neutral. **Mr. Newgard** said he assumed that capping off the pull-tab level was because there was a level at which the regulatory responsibility, or the cost of the regulatory responsibility, had a certain peak in which it cost a certain number of dollars to regulate. Once they hit that peak, there was no need to go beyond that in license fees. The pull-tab operation has not been changed by the legislation—it's still seven days a week—and his question remained how he could go from \$10,000 to \$17,000 in license fees and still fall within the parameters of the 3.29 percent or the I-601. Mr. Newgard emphasized that there are licensees that have been running pull-tabs seven days a week for thirty years (commercial operators).

Derry Fries, Assistant Director asked to make a point of clarification. He explained that when staff looked at the costs for regulation, licensing, and enforcement, it was not direct services to one individual or one organization. He advised that staff takes a holistic view, and staff believes the licensing fees proposed are the appropriate amount needed to manage and regulate gambling activities in the state of Washington.

Commissioner McLaughlin inquired whether commercials pay the same on Punchboards. **Mr. Fries** affirmed. **Mr. Ackerman** advised that by statute, the Commission is required to collect fees sufficient to fund all of its activities. Licensing fees finances all the activities the Commission has. What the Commission is doing is making a policy call as to how they are going to allocate those fees in the future. They've made that determination that it is necessary to expand the classes, and they have allocated those fees in that manner. The Commission must have sufficient monies, and they've chosen to allocate it in this fashion. Some people will be benefited by the changes the Commission is making to the fee schedule; other people will be disadvantaged by it. However, it all runs back to the Commission's obligation statutorily to recover the funds necessary to operate the agency. People may disagree about the appropriateness of the classifications the Commission is considering, but, it's a policy choice to make, and as he understands it, it's essentially revenue-neutral in the amount of money the agency is raising.

Gary Murray, Recreational Gaming Association, addressed Mr. Newgard's question to the director and the director's answer relevant to the changes in the scope of the gaming classes of Bingo operating seven days a week. He didn't believe it had a correlation to the commercial stimulant or the for-profit groups and why theirs expanded since there was no change in activity. He believed that it was just to keep consistency between the two.

Mr. Murray noted that on several occasions their members have discussed the price for unemployed people to become licensed. Right now, it costs \$279 or \$281 for someone to get into this industry. He emphasized that it is difficult for unemployed people to come up with \$300 to even apply. His organization is asking the Commission to look carefully at how much it costs to enter this business, which is heavily regulated. They ask the Commission to consider whether the entry license fee might be too high. The argument has been that the Commission charges for services rendered. The

presentation just provided notes that the Commission raises fees to provide an overall service, and doesn't charge per service for direct services that are received. **Commissioner Niemi** responded that the state has many licensing agencies, some of which are within other agencies. They license lawyers, doctors, massage therapists, and in every occasion, the people being licensed pay a fee to be licensed. It costs more to license people for gambling because they have to pay for background checks, and etc. She felt the Commission's fees, when compared to every other licensing area, are reasonable. Mr. Murray said they understand and don't disagree that it costs a lot of money to investigate a person and license a person. The concern is that it makes it difficult for someone from a disadvantaged background.

Commissioner McLaughlin asked how much the fee increase was. **Mr. Fries** responded the increases were from \$230 to \$237 in state, and from \$286 for \$295 for out-of-state applicants. Commissioner McLaughlin didn't think that was unreasonable. Mr. Murray agreed that the increase is not unreasonable. However, the desire was for the Commission to look at the whole structure, and the entry levels the license fees start at.

Mr. Murray also commented regarding the Governor and OFM seeing Gambling Commission money sitting in the bank, and their potential to go after Commission funds again. Early implementation of the fee increase may increase the fund balance. His organization feels they would be paying double for license fees, especially if another fund transfer occurs. **Chair Orr** agreed and said he was very upset at the way OFM was doing business. However, the Commission has an obligation to run this shop. He advised the Commission understands what the organizations are saying, and he wished there were some way to correct the action.

Tim Iszley addressed the stamp machine fee increase, noting it's different from the other license fees because it is not prorated. It is the same cost whether the stamp is purchased in January or December. He hoped the Commission would consider such application of the license fee. He also spoke to the in-state license fees for new dealers. He advised there have been a couple of changes recently to what's going to be required on new applications for dealers. The first is the transfer to the classes, and he noted the burden of that is going to be put on the operators now, so there should be a reduction in expense to the Commission. However, instead of a reduction in fees, the industry is seeing an increase in fees. He suggested looking at the difference between the fees in the Bingo managers and dealers. Bingo managers are in a position where they could do much more harm to their organization than a dealer. He believed dealers are carefully regulated and watched internally. Fees for a Bingo manager are going from \$166 to \$171 and the first time dealers are going from \$230 to \$237. Mr. Iszley advised that he would appreciate the Commission considering the on-going increases and impacts to the potential employees.

Ian Foaker, Douglas Press, shared the cost of manufacturer representative fees that he is charged in other states: Minnesota, \$125; California, nothing; North Dakota, nothing; Wyoming, nothing; Nevada, \$25; Alaska, nothing; Arizona, nothing; New Mexico, nothing for the same service. He noted that in his previous life he was a general sales manager of a beer distributorship in Washington and he noted that the Washington State Liquor Control Board only charges \$25 per year for a representative license, for the same background checks. **Commissioner McLaughlin** asked what Washington charges and he responded \$179, going to approximately \$186-\$187. **Chair Orr** cautioned him about comparing costs between states because a lot of the states he mentioned have state income taxes. Mr. Foaker thought that Minnesota was perhaps the closest example to what Washington does, and he noted that they're 35 percent less for the same service.

Mr. Fries clarified that new license fees are substantially different than renewal license fees. It usually costs the agency less to process the renewal license, versus processing a new application. As license fees are considered, staff takes a holistic view across the board of what it takes to regulate gambling in this particular area. For example, a card room employee who performs his duty in an enhanced card room or a house-banked card room--the fee would be \$237 for the original license fee. The renewal fee would be \$146. The original license fee for a charitable nonprofit gambling manager would be \$171, and the renewal would be \$82. The difference is that we don't send fingerprints to the FBI for a charitable nonprofit gambling manager. The agency facilitates police checks, and if there is a red flag, we will fingerprint the individual.

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to adopt the fee increase, with staff's Alternative 1, and to delay the effective date until June 30, 2003.

Director Day affirmed that if it is the Commission's decision to delay the effective date until June 30, it still preserves the increase in the base for this fiscal year, but defers about \$150,000 in fees. If the implementation date were delayed

further than that, there would be no fee increase at all this fiscal year. **Commissioner Niemi** asked him to explain why they shouldn't start January 1. Director Day responded that decision is definitely up to the Commission. At this point, the reason that would support this particular motion, would be that the Commission could delay the fee increase and still operate according to the approved budget. The agency has the sufficient fund balance, which also goes to some of the concerns that were expressed about collecting more fund balance monies than is necessary to operate the agency. Secondly, by delaying implementation, it provides a six-month advance warning to the licensees who are going to expand their operation to seven days, and allows them with a period of time where they can operate increased days without paying any increased fees. It also will aid the agency's processing ability by allowing additional time to actually provide the notice of fee increase, get the changes to the forms that are necessary, and begin that process on June 30th. Essentially, it preserves the agency's base funding, which will balance the budget and still provide sufficient revenue.

Chair Orr called for additional comments or questions. There were none. Vote taken; the motion carried unanimously.

11. Other Business/General Discussion/Comments from the Public:

Chair Orr called for public comments. There were no further comments.

12. Adjournment:

With no further business, Chair Orr adjourned the meeting at 10:45. a.m. The next meeting is scheduled for January 9 and 10, 2003, in Olympia.

Minutes submitted by:

Shirley Corbett
Executive Assistant